



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/812,426

03/30/2004

Tony A. Cutshall

DEP 5069

3354

27777

7590

04/30/2007

PHILIP S. JOHNSON

JOHNSON & JOHNSON

ONE JOHNSON & JOHNSON PLAZA

NEW BRUNSWICK, NJ 08933-7003

EXAMINER

GEORGE, TARA R

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

04/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/812,426

Applicant(s)

CUTSHALL ET AL.

Examiner

Tara R. George

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☒ Claim(s) 28-36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10/20/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claims 28-36 are objected to because they are misnumbered. Because there is neither a claim 26 nor a claim 27, claims 28-36 are in actuality claims 26-34 and have been examined as such. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 4,6,8,14 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1. Claim 4 recites the limitation "the general form" in line 2. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.
2. Please insert the word "the" between "wherein" and "relief in line 1 of claim 6.
3. Please replace the word "that", between "smaller" and "twice", with the word "than" in line 10 of claim 8.
4. Claim 14 recites the limitation "the distance" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.
5. Claim 28 recites the limitation "the distance" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-36 are rejected under 35 U.S.C. 102(b) as being anticipated by White et al. (US Pat. 7,048,740 B2).

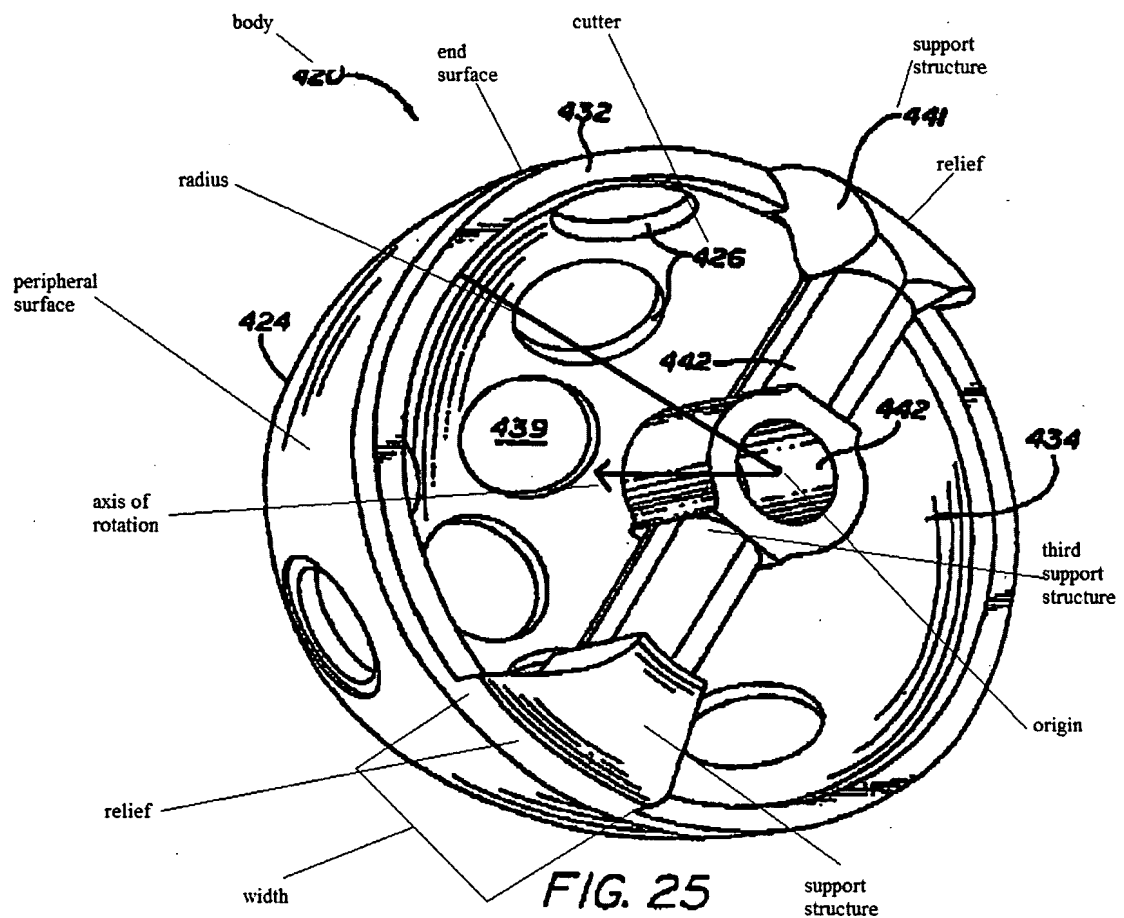
White discloses a reamer comprising a body 420 including a peripheral surface defined by a radius extending from an origin, said body defining an axis of rotation thereof, said body defining an end surface operably connected to peripheral surface and, said body defining a relief surface spaced from the axis of rotation and operably connected to peripheral surface of said body; a cutter 426 operably associated with said body; and a support structure 441 secured to the relief surface of said body (see Figure 25 below and col. 10 lines 63-67 and col. 11 lines 1-15). The end surface of said body can be generally planar and perpendicular to the axis of rotation of said body; and the cutter and said body can be integral with each other (see Figure 25 below and col. 10 lines 63-67 and col. 11 lines 1-15). The body can also have a general form of a hollow, truncated hemisphere (see Figure 25 below and col. 10 lines 63-67), and the relief surface of said body can also be generally planar and parallel to the axis of rotation (see Figure 25 below). The body can also define a second relief surface spaced from the first mentioned relief surface (see Figure 25 below) wherein the second relief surface can define a width dimension therebetween, the width dimension being substantially smaller

Art Unit: 3733

that twice the radius of said body (see Figure 25 below). The reamer can also further comprise second and third support structures secured to the second relief surface and secured to both first and second support structures for interconnecting said support structures, respectively. The reamer can also further comprise a driver (see col. 11 lines 7-15). The support structure can also be integral with said body (see col. 1 lines 13-15), and can also comprise one of a rib, a gusset, a bar, a tube, and a plate (see Figure 25 below and col. 11 lines 13-15). The support structure extends substantially along the relief surface of said body (see Figure 25 below). White further discloses a method comprising providing a cutting tool as disclosed above, cutting an incision in the patient, using the cutting tool to prepare a cavity for the prosthesis; and implanting the prosthesis (see col. 1 lines 20-32, col. 2 lines 44-51 and col. 6 lines 10-20). With regards to claims 9,10 and 14 White discloses the claimed invention except for the first and second relief surfaces defining an included angle therebetween, wherein said angle can be less than 90 degrees, and the distance between the first and second relief surfaces is less than  $\frac{2}{3}$  of the radius of the body. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the reamer of White with the first and second relief surfaces defining an included angle therebetween, wherein said angle can be less than 90 degrees, and the distance between the first and second relief surfaces is less than  $\frac{2}{3}$  of the radius of the body, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art

Art Unit: 3733

would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966).



**Conclusion**

Art Unit: 3733

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art of cited interest.

Any inquiry concerning this communication should be directed to Tara George whose telephone number is 571-272-3402. The examiner can normally be reached on M-F 8am-5pm. If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions about access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

TRG  
TRG



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER